

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CONCORD HILL CONDOMINIUM
ASSOCIATION, a Washington Non-Profit
Corporation,

Plaintiff.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation; and DOE INSURANCE COMPANIES 1-10.

Defendants.

NO.

COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT, BAD
FAITH, CONSUMER PROTECTION ACT
VIOLATIONS, AND DAMAGES

JURY DEMAND

The Concord Hill Condominium Association (the “Association”) alleges as follows:

I. INTRODUCTION

1.1 This is an action for declaratory judgment, breach of contract, bad faith violations, Consumer Protection Act (“CPA”) violations, and money damages seeking:

(A) A declaration of the rights, duties and liabilities of the parties with respect to certain controverted issues under Defendant Allstate Insurance Company (“Allstate”) insurance policies issued to the Association. The Association is seeking a ruling that the Allstate policies provide coverage for hidden damage at the Concord Hill Condominiums and that Allstate is liable for money damages for the cost of repairing hidden damage at the Concord Hill Condominiums.

(B) Damages for breach of contract, bad faith, and violations of the CPA against Allstate.

COMPLAINT FOR DECLARATORY RELIEF,
BREACH OF CONTRACT, BAD FAITH,
CONSUMER PROTECTION ACT VIOLATIONS,
AND DAMAGES - 1

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1 (C) Attorneys' fees and costs (including expert witness fees) against Allstate.
2 (D) Any other relief the Court deems just and equitable.

3 **II. PARTIES AND INSURANCE CONTRACTS**

4 2.1 The Association. The Association is a nonprofit corporation organized under the laws of the
5 state of Washington with its principal place of business located in Bellevue, Washington. The
6 Association has the duty to maintain the common elements and any limited common elements of
7 the Concord Hill Condominiums. The Concord Hill Condominiums consists of nine (9) residential
8 buildings constructed in approximately 1982 containing sixty-four (64) units located in Bellevue,
9 Washington. The exterior cladding consists of vinyl horizontal lap and vertical vinyl panel siding
10 installed over asphalt impregnated building paper and a combination of plywood and asphalt faced
11 fiberboard sheathing.

12 2.2 Allstate. Allstate is an Illinois domiciled insurer with its principal place of business in
13 Illinois. Allstate sold and issued property insurance policies to the Association including Policy
14 No. 050993012 (in effect from at least 09/11/1984 to 12/21/1991). The Allstate policies identify
15 the Concord Hill Condominiums as covered property.

16 2.3 Doe Insurance Companies 1–10. Doe Insurance Companies 1–10 are currently
17 unidentified entities who, on information and belief, sold insurance policies to the Association
18 that identify the Concord Hill Condominiums as covered property.

19 2.4 Concord Hill Insurers. Allstate and Doe Insurance Companies 1–10 shall be collectively
20 referred to as the "Concord Hill Insurers."

21 2.5 Concord Hill Policies. The policies issued to the Association by the Concord Hill Insurers
22 shall be collectively referred to as the "Concord Hill Policies."

23 **III. JURISDICTION AND VENUE**

24 3.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332
25 (diversity jurisdiction) as the parties are completely diverse in citizenship and the amount in
26 controversy exceeds \$75,000.

1 3.2 Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(2) as the Concord Hill
 2 Insurers marketed and sold insurance to the Association in King County; a substantial part of the
 3 events giving rise to the claim, including the breach of contract, occurred in King County; and the
 4 insured condominium building is located in King County.

5 **IV. FACTS**

6 4.1 Incorporation by Reference. The Association re-alleges the allegations of Paragraphs 1.1
 7 through 3.2, above, as if fully set forth herein.

8 4.2 Tender to Allstate. In November 2020, Evolution Architecture (“Evolution”) conducted a
 9 preliminary intrusive investigation at the Concord Hill Condominiums. During the preliminary
 10 intrusive investigation at the Concord Hill Condominiums, Evolution discovered hidden damage.
 11 On March 3, 2021, the Association tendered an insurance claim to Allstate for the hidden damage
 12 discovered during the November 2020 preliminary intrusive investigation at the Concord Hill
 13 Condominiums. As part of its claim tender, the Association asked Allstate to investigate for any
 14 other hidden damage that may exist at the Concord Hill Condominiums. The Association also
 15 requested that Allstate enter into a tolling agreement with the Association. Allstate entered into a
 16 tolling agreement with the Association effective the date of tender.

17 4.3 Joint Intrusive Investigation. On June 7–9, 2021, the Association, including Evolution,
 18 Allstate, including its experts at MKA International, Inc. (“MKA”), and the Association’s other
 19 historical insurers and respective consultants conducted a joint intrusive investigation of the
 20 Concord Hill Condominiums. The joint intrusive investigation revealed system-wide damage to
 21 the exterior building components, including the sheathing and framing, at the Concord Hill
 22 Condominiums.

23 4.4 Evolution Findings Report. Based on the results of the joint intrusive investigation,
 24 Evolution prepared its Building Envelope Investigation Findings Report, dated July 23, 2021
 25 (“Evolution Report”). As set forth in the Evolution Report, it is Evolution’s opinion that water
 26 intrusion in the form of rainwater events, including wind-driven rain, is the primary cause of the
 27

1 hidden water damage identified at the Concord Hill Condominiums. According to Evolution, the
2 hidden damage at the Concord Hill Condominiums has occurred incrementally and progressively
3 each year from 1982 to the present, and some new damage commenced during each of the Allstate
4 policy periods. The cost to repair the hidden damage at the Concord Hill Condominiums is in
5 excess of \$1,000,000.00, well over the jurisdictional limit of \$75,000.

6 4.5 Allstate's Denial of the Association's Claim. On June 7, 2022, Allstate unreasonably
7 denied the Association's insurance claim.

8 **V. FIRST CLAIM AGAINST THE CONCORD HILL INSURERS:
9 DECLARATORY RELIEF THAT THE CONCORD HILL POLICIES PROVIDE
10 COVERAGE**

11 5.1 The Association re-alleges and incorporates by reference the allegations of Paragraphs 1.1
12 through 4.5, above, as if fully set forth herein.

13 5.2 The Association seeks declaratory relief from the Court in the form of determinations
14 regarding the following disputed issues:

15 (A) That the Concord Hill Policies cover the hidden damage to exterior building
16 components, including the sheathing and framing, at the Concord Hill Condominiums.

17 (B) No exclusions, conditions, or limitations bar coverage under the Concord Hill
18 Policies.

19 (C) That the loss or damage to the Concord Hill Condominiums was incremental and
20 progressive. New damage commenced during each year of the Concord Hill Policies.

21 (D) As a result, the Concord Hill Policies cover the cost of investigating and repairing
22 the hidden damage at the Concord Hill Condominiums.

23 **VI. SECOND CLAIM: AGAINST ALLSTATE FOR
24 BREACH OF CONTRACT**

25 6.1 The Association re-alleges and incorporates by reference the allegations of Paragraphs 1.1
26 through 5.2, above, as if fully set forth herein.

27 6.2 Allstate has contractual duties under the terms of its policies to pay the cost of
28 investigating and repairing the covered damage to the Concord Hill Condominiums.

1 6.3 Allstate breached its contractual duties by wrongfully denying coverage on June 7, 2022,
2 and by failing to pay the cost of repairing the covered damage to the Concord Hill
3 Condominiums.

4 6.4 As a direct and proximate result of Allstate's breach of its contractual duties the
5 Association has been damaged in an amount to be proven at trial.

6 6.5 As a direct and proximate result of Allstate's breach of its contractual duties, the
7 Association has been forced to incur attorneys' fees, expert costs, investigation costs, and other
8 expenses in order to prosecute this action, the sole purpose of which is to obtain the benefits of
9 the Association's insurance contracts.

10 **VII. THIRD CLAIM: AGAINST ALLSTATE FOR INSURANCE BAD FAITH**

11 7.1 The Association re-alleges and incorporates by reference the allegations of Paragraphs 1.1
12 through 6.5, above, as if fully set forth herein.

13 7.2 The business of insurance is one affected by the public interest, requiring that all persons be
14 actuated by good faith, abstain from deception, and practice honesty and equity in all insurance
15 matters. RCW 48.01.030. An insurer has a duty to act in good faith. This duty requires an insurer
16 to deal fairly with its insured. The insurer must give equal consideration to its insured's interests
17 and its own interests and must not engage in any action that demonstrates a greater concern for its
18 own financial interests than its insured's financial risk. An insurer who does not deal fairly with its
19 insured, or who does not give equal consideration to its insured's interests, fails to act in good
20 faith.

21 7.3 The duty of good faith requires an insurer to conduct a reasonable investigation before
22 refusing to pay a claim submitted by its insured. An insurer must also have a reasonable
23 justification before refusing to pay a claim. An insurer who refuses to pay a claim, without
24 conducting a reasonable investigation or without having a reasonable justification, fails to act in
25 good faith.

1 7.4 Allstate had a duty to investigate, evaluate, and decide the Association's claim in good
 2 faith. Allstate breached its duty by unreasonably investigating, evaluating, and/or denying the
 3 claim by, among other things: (1) failing to acknowledge that weather conditions such as rain or
 4 wind-driven rain were one of the causes of the hidden damage at the Concord Hill Condominiums;
 5 (2) failing to acknowledge that weather conditions, such as rain and wind-driven rain, are covered
 6 causes of loss under the Allstate policies when the policies issued to the Association expressly
 7 provide coverage for damage caused by or resulting from rain; (3) in asserting that its inadequate
 8 construction exclusion applies, failing to acknowledge that there is coverage under the Allstate
 9 policies for the concurrent combination of rain and inadequate construction; (4) failing to
 10 acknowledge that there is coverage under the resulting loss clause in the Allstate policies; and (5)
 11 failing to define terms in the Allstate policies pursuant to the plain meaning of the terms.

12 7.5 In addition, Allstate ignores case law in the Western District of Washington that is directly
 13 contrary to the coverage positions taken by Allstate by, among other things, refusing to follow the
 14 decision in *Greenlake Condo. Ass'n v. Allstate Ins. Co.*, No. C14-1860 BJR, 2015 U.S. Dist.
 15 LEXIS 184729 (W.D. Wash. Dec. 23, 2015), which ruled that the Allstate Customizer policy
 16 covers: (1) wind-driven rain; (2) repeated leakage of water; (3) damage to exterior wall sheathing
 17 and framing caused by a combination of rain and inadequate construction; and (4) water damage
 18 resulting from inadequate construction or maintenance. Allstate's self-serving denial does not
 19 comport with Washington law or the plain meaning of its own policy language and put Allstate's
 20 financial interests ahead of the Association's to the Association's detriment.

21 7.6 A violation, if any, of one or more of the Washington claims handling standards set forth
 22 below is a breach of the duty of good faith, an unfair method of competition, an unfair or deceptive
 23 act or practice in the business of insurance, and a breach of the insurance contract. Allstate's
 24 conduct violated Washington claims handling standards:

25 ■ Which require it to fully disclose all pertinent coverages.

- Which prohibit misrepresentations regarding relevant facts (e.g. the cause of damages) or coverage.
- Which prohibit the practice of refusing to pay claims without conducting a reasonable investigation.
- Which require Allstate to provide a reasonable explanation of the relevant facts, law, and policy language and how its policy language supported a denial of the Association's claim.
- Which require Allstate to adopt and implement reasonable standards for the prompt investigation of claims.

7.7 Allstate's actions and omissions, including but not limited to its denial of coverage, were unreasonable, unfounded, and frivolous under the circumstances and constitute a breach of Allstate's duty of good faith. As a direct and proximate result of these breaches, the Association has been damaged in an amount to be proven at trial.

VIII. FOURTH CLAIM: AGAINST ALLSTATE FOR VIOLATIONS OF THE CONSUMER PROTECTION ACT

8.1 The Association re-alleges and incorporates by reference the allegations of Paragraphs 1.1 through 7.7, above, as if fully set forth herein.

8.2 Violations of Washington Administrative Code (“WAC”) claims handling standards are perhaps CPA violations. On information and belief, Allstate’s conduct was deceptive, impacted the public, and had the capacity to deceive. The Association is a consumer. As a direct and proximate result of Allstate’s violations, the Association has been damaged in an amount to be proven at trial. Under the CPA, the Association is entitled to damages, CPA penalties of up to \$25,000 per violation, and attorneys’ fees.

IX. PRAYER FOR RELIEF

WHEREFORE, the Association prays for judgment as follows:

9.1 Declaratory Judgment Regarding Coverage. A declaratory judgment that the Concord Hill Policies provide coverage as described herein.

1 9.2 Money Damages. For money damages in an amount to be proven at trial.

2 9.3 Attorneys' Fees and Costs of Suit. For reasonable attorneys' fees and costs (including
3 expert fees). *See Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673
4 (1991), and RCW 48.30.015.

5 9.4 CPA Penalties. For CPA penalties against Allstate of up to \$25,000 per violation.

6 9.5 Other Relief. For such other and further relief as the Court deems just and equitable.

7 **X. DEMAND FOR JURY TRIAL**

8 10.1 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Association demands trial
9 by jury in this action of all issues so triable.

10 Dated the 20th day of July, 2022.

11 **STEIN, SUDWEEKS & STEIN, PLLC**

12 /s/ Jerry H. Stein

13 /s/ Justin D. Sudweeks

14 /s/ Daniel J. Stein

15 /s/ Jessica R. Burns

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